

ORIGINAL  
IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

✓ AUG 13 2007  
at \_\_\_\_\_ o'clock and \_\_\_\_\_ min. \_\_\_\_\_ M.  
SUE BEITIA, CLERK

JOHN SARDINHA,	)	
	)	
Petitioner,	)	CV. No. 05-00175 DAE-BMK
	)	CR. No. 02-00272-04 DAE
	)	
	)	
V.	)	
	)	<b>PETITIONER'S MOTION FOR ISSUANCE</b>
UNITED STATES OF AMERICA,	)	<b>OF A CERTIFICATE OF APPEALABILITY;</b>
	)	<b>NOTICE OF APPEAL</b>
Respondent.	)	
	)	
	)	

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COMES NOW the Petitioner JOHN SARDINHA, Pro Se and indigent, respectfully moves this Court for issuance of a certificate of appealability on the issue of "known defense" being granted in part by this Court on April 20, 2006.

This Court having jurisdiction of this motion pursuant to the Federal Rules of Civil Procedure, and because the Petitioner never received a copy of the order granting the certificate of appealability until one (1) year after the issuance of District Court's order, the Clerk of the Court for the District of Hawaii never sending a copy of the order to the Petitioner, thus, it was unbeknown to the Petitioner that the Court granted the certificate of appealability.

The Petitioner submits this memorandum brief and in support thereof states:

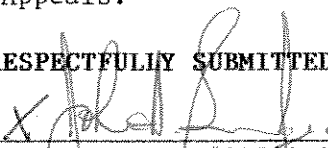
1. Petitioner, JOHN SARDINHA, is in custody under a sentence imposed by this Court, and this Court is a Court established by an act of Congress.
2. On March 24, 2003, Petitioner entered into a plea agreement with the Office Of The United States Attorney, AUSA Chris A. Thomas. Petitioner pleading guilty to counts one and seven of the Superseding Indictment, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846 reflecting Counts one and seven.

3. On March 8, 2004, this Court imposed a 135 month sentence on the Petitioner on Counts one - seven of the plea agreement.
4. Petitioner's Attorney Mr. Breiner was granted leave by this Court to file a timely notice of appeal by March 18, 2004, but facts revealed that no such appeal was ever filed.
5. On March 4, 2005, Petitioner filed with this Court pursuant to 28 U.S.C. § 2255, a motion to vacate, set aside, or correct sentence, citing numerous violations by his attorney and other procedural errors, this Court denying any relief to the Petitioner on February 17, 2006.
6. After this Court denied Petitioner's motion § 2255, Petitioner filed a motion for a certificate of appealability on March 6, 2007, this Court granting in part appealability on the issue of "KNOWN DEFENSE".
7. Petitioner at that time was incarcerated at Taft Correctional Institution at Taft, California, Petitioner has been transferred to the Federal Prison Camp located in Atwater, California, since April 10, 2007.
8. Petitioner never received anything from the Clerk of the Court regarding if his motion for certificate of appealability was approved or denied, over one year had passed before the Petitioner wrote a letter to the District Court Clerk requesting status on this motion.
9. On May 10, 2007, Petitioner received a letter from the Clerk's Office and a copy of the order granting the certificate of appealability in part, however, one (1) year had passed in regards to this Court's order and for the time allowed for the Petitioner to file with the Ninth Circuit Court of Appeals.
10. **WHEREFORE**, it is respectfully requested that this Court issue an order, granting the certificate of appealability on the issue of "KNOWN DEFENSE", so the Petitioner can appeal his case with the Ninth Circuit Court of Appeals.

DATED: this 6 day of August, 2007

**RESPECTFULLY SUBMITTED**

Sig/

  
JOHN SARDINIA #89543-022 (Pro Se)  
FEDERAL PRISON CAMP, ATWATER  
PO. BOX 019001  
ATWATER, CALIFORNIA 95301

CERTIFICATE OF SERVICE

I, John Sardinha hereby certify that I have served a true and correct copy of the following:

Petitioner's motion for the issuance of a certificate of appealability, notice of appeal.

Which is deemed filed at the time it was deposited in Federal Prison Camp, Atwater, California, internal mail system, since FPC Atwater has no separate system designed for legal mail, in accordance with Rule 4, Federal Rules of Appellate Procedure and Houston V. Lack, 108 S.Ct. 2379 (1988), by placing same in a sealed, first class postage prepaid envelope addressed to:

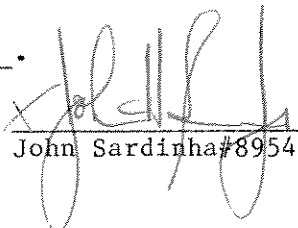
UNITED STATES ATTORNEY  
AUSA, CHRIS THOMAS  
ROOM 6100, PJKK FEDERAL BUILDING  
300 ALA MOANA BLVD.,  
BOX 50183  
HONOLULU, HAWAII 96850

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
300 ALA MOANA BLVD., C-338  
HONOLULU, HAWAII 96850-0338

and deposited same in the institution mail box, (mail room), at Federal Prison Camp Atwater, California.

I declare, under the penalty of perjury (Title 28 U.S.C. § 1746), That the foregoing is true and correct.

Dated this 6 day of August, 2007.

  
John Sardinha #89543-022 (Pro Se)